

## Changes to the 2010 Compliance Manual

These are the major changes, updates, and additions to the 2010 Compliance Manual. The new information is shown here in **red**, **bold**, *italic*, and underlined font. However, the changes will not be formatted differently in the actual text of the manual.

Note that the changes identified here only represent those areas where there were major changes in policies or where new examples and clarifications have been added. Minor alterations such as formatting, corrected grammatical errors, and small changes in wording have not been identified in this section.

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### **Part 1.2          Contents and Summary**

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Indiana's compliance monitoring plan follows final IRS regulations, as well as the recommendations of the National Council of State Housing Agencies (NCSHA), *guidance issued by the IRS in the Guide for Completing Form 8823 Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition: Revised October 2009 (commonly referred to as the 8823 Guide), and the income rules found in Chapter 5 of HUD Handbook 4350.3.* The current edition of the Compliance Manual is applicable to all Owners of all buildings which have ever claimed the Rental Housing Tax Credit in Indiana since the inception of the program in 1987.

*\*NOTE: All references to the "8823 Guide" made throughout this manual refer to the October 2009 Revision.*

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### **Part 2.2          Responsibilities of Development Owner**

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#### **I.      Reporting to IHCDA any changes in ownership or management of the property**

If a change in ownership occurs, a detailed description of the change must be provided in writing to IHCDA. *Changes in ownership must be reported via IHCDA's "Property Ownership Change Form," found in Appendix D available online at <http://www.in.gov/ihcda/2519.htm>.*

*Failure to notify IHCDA of changes in ownership after the issuance of IRS Form 8609 could result in the allocation being rescinded and/or possible noncompliance issues.*

*Note: The IHCDA Board of Directors must approve any change in ownership or transfer request if made prior to the issuance of IRS Form 8609 for any Development that has received an allocation of Rental Housing Financing and/or Bonds.*



## **J. Reporting tenant events and submitting Annual Owner Certifications**

Beginning January 1, 2009, all IHCDAs assisted multi-family rental developments are required to enter tenant events using the Indiana Housing Online Management rental reporting system. Tenant events include move-ins, move-outs, recertifications, unit transfers, rent ~~and income~~ and utility allowance changes, household composition updates, and student status updates. In order to obtain the maximum benefits from the Indiana Housing Online Management system it is **required that all tenant events be entered into the system within thirty (30) days of the event date.**

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management website at <https://ihcdaonline.com/>. Free on-demand training videos that explain how to use the rental reporting system are available online at <https://ihcdaonline.com/Links.htm>. *Additionally, in March 2009, IHCDAs released detailed guidance on registering for the Online Management website in Multi-Family Department Notice MFD-09-06. This notice (and all other past MFD Notices) is archived online at <http://www.in.gov/ihcda/2520.htm>.*

**M. Providing all pertinent property information to the management company (i.e. Final Application for rental housing financing, Declaration of Extended Low-Income Housing Commitment, *copies of the Form 8609 for each building, QAP, Compliance Manual, etc.*). *Additionally, if there is a change in management companies, the Owner is responsible for providing all information and previous tenant files to the new management company.***

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## **Part 3.2 Minimum Set-Aside Election, Applicable Fraction, and Income Limits**

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### **B. Applicable Fraction**

*The Applicable Fraction is the portion of a building that the Owner has designated for low-income households to occupy. The Applicable Fraction is the lesser of (a) the ratio of the number of low-income units to the total number of units in the building or (b) the ratio of the total floor space of the low-income units to the total floor space of all units in the building.*

*For a building to remain in compliance, the Applicable Fraction must always be at or above the fraction assigned to that building in the Final Application.*

*Example: Building A has 6 units. Units 1-3 are 2 bedroom units at 800 ft<sup>2</sup> and units 4-6 are 3 bedroom units at 1200 ft<sup>2</sup>. According to the Final Application, the building's Applicable Fraction is 50%. The Owner of Building A has rented units 4-6 as market rate units so that he can charge higher market rates for the larger sized units. The Owner believes he is in compliance because the unit fraction is 3 out of 6, or 50%. However, the Owner must consider the floor space fraction as well as the unit fraction. In this case, the total square footage of the units is 6000 ft<sup>2</sup>. The low-income square footage (sum of square footage for units 1-3) is 2400 ft<sup>2</sup>. 2400 ft<sup>2</sup>/6000 ft<sup>2</sup> gives a fraction of 40%. Since the Applicable Fraction is defined as the lower of the two ratios, the actual Applicable Fraction for this building is 40%. The Owner is out of compliance for violating the Applicable Fraction.*



Note: The Applicable Fraction and the Minimum Set-Aside are not the same thing. The Applicable Fraction tells the percentage of units/floor space that must be reserved for tax credit households in a specific building. The Minimum Set-Aside tells the minimum percentage of units that must be set-aside as tax credit units in the entire project (as defined on Form 8609), and what federal income restriction these units must be set at (50% or 60%). To be in compliance, a project must meet its Minimum Set-Aside, and each building within that project must meet its Applicable Fraction.

### C. Maximum Income Limits

In 2009, HUD published “HERA Special” income limits for counties impacted by HUD’s “hold-harmless” policy. (Note: “HERA” refers to the Housing and Economic Recovery Act of 2008). The HERA limits must be used by all tax credit projects that placed-in-service on or before December 31, 2008. However, not all counties in Indiana have HERA Special limits. Projects that placed-in-service in 2009 or after are not eligible to use the HERA Special Limits.

When determining if a Household’s income is at or below the applicable limit, the earned income from each adult Household member 18 years or older and the unearned income of all members of the Household (regardless of age ) must be included.

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## Part 3.3 Maximum Gross Rent

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### C. Section 8 Rents

NOTE: For tenants receiving Section 8 rental assistance, a copy of the HAP (Housing Assistance Payment) Contract and the current HAP Amendment from the Section 8 agency must be kept in the Household’s tax credit file in order to verify the amount of Section 8 rental assistance received.

### E. Violations of the Rent Limit

The Revised 8823 Guide states:

“A unit is in compliance when the rent charged does not exceed the gross rent limitations on a monthly basis” (Page 11-8).

“A unit is out of compliance if the rent exceeds the limit on a tax year basis or on a monthly basis. A unit is also considered out of compliance if an owner charges impermissible fees” (Page 11-9).

Furthermore, the IRS has clarified in the 8823 Guide that once a unit has exceeded the rent limits, that unit is out of compliance for the entire tax year, regardless of how quickly the rent is adjusted or if the Tenant is reimbursed for the overcharge. The Guide states on Page 11-10:

“Once a unit is determined to be out of compliance with the rent limits, the unit ceases to be a low-income unit for the remainder of the owner’s tax year. A unit is back in compliance on the



first day of the owner's next tax year if the rent charged on a monthly basis does not exceed the limit. The owner cannot avoid the disallowance of the LIHC by rebating excess rent or fees to the affected tenants."

Therefore, if IHCDA discovers a violation of the rent limit for a unit, an 8823 will be issued and that unit will be considered out of compliance for the remainder of the year. A corrected 8823 will be issued at the beginning of the next year, as long as the rent has been properly lowered and is now below the applicable limit. While refunding the overcharge does not prevent the noncompliance 8823 from being issued, IHCDA will still require the Owner to reimburse the Tenant before a corrected 8823 will be issued for the unit.

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## Part 3.4 Utility Allowances

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\*NOTE: The following information is not new, but was reworded and put into a list format to clearly outline the Utility Allowance options for tax credit buildings without HUD or RD assistance.

D. Buildings without Rural Development or HUD assistance (i.e. "Tax Credit only") Tax credit buildings without HUD or RD funding may use any of the following Utility Allowance options:

-Use the applicable local PHA Utility Allowance.

-Use the county specific Utility Allowance Schedule from IHCDA's website (<http://www.in.gov/ihcda/3102.htm>.)

-Utility Company Estimate: An interested party may request the utility company estimation of actual utility consumption for each unit of similar size and construction in the building's geographic area. Such an estimate must be in writing, signed by an appropriate local utility company official, prepared on the utility company's letterhead, and maintained in the Development file. Use of the actual utility rates, whether higher or lower, is required once they have been requested.

-Options E, F, or G as described below

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## Part 3.5 Rules Governing the Eligibility of Particular Residential Units

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### B. Vacant Unit Rule

Note: The Vacant Unit Rule does not apply for Developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 5.11, specifically part 5.11 C, Compliance Requirements.



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## Part 3.6 Rules Governing the Eligibility of Particular Tenants and Uses

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### B. Student Status

An educational organization, as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has an enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job training courses. **NOTE: The full-time student definition does apply to students taking courses online if they are considered to be full-time by the educational organization.**

There are five exceptions to the full-time student restriction. Full-time student Households that are income eligible and in which at least one of the Household members satisfies one or more of the following conditions can be considered an eligible Household. A Household comprised entirely of full-time students may not be counted as a qualified Household under the RHTC program unless the Household meets one of the following five exceptions:

1. All Household members are full-time students, and such students are married and are entitled to file a joint tax return.

**Required Documentation: Copy of the most recent tax return or the marriage license.**

2. The Household consists of single parents and their children, and such parents and children are not tax dependents of another individual, with the exception that the children may be claimed by the absent parent.

**Required Documentation: Copy of the most recent tax return.**

3. At least one member of the Household receives assistance under Title IV of the Social Security Act [Aid to Families with Dependent Children (AFDC) or Temporary Aid to Needy Families (TANF)].

**Required Documentation: Third-party verification of the AFDC or TANF award.**

4. At least one member of the Household is enrolled in a job training program receiving assistance under the Job Training Partnership Act or similar federal, state, or local laws.

**Required Documentation: Third-party verification of enrollment and a mission statement from the job training program.**

5. At least one member of the Household was previously under the care and placement responsibility of the state agency responsible for administering a plan under Part B or Part E of the Title IV of the Social Security Act. The member claiming to have been a foster child must have been placed into foster care through an official state foster agency. **NOTE: This exemption only applies to eligibility determinations made on or after 7/30/08.**

**Required Documentation: Third-party verification from the foster care agency or self-affidavit from the Tenant if third-party verification cannot be obtained.**



**Example- “5 months out of the calendar year”**

An applicant applies to live in a tax credit unit on June 2, 2009. She graduated college on May 16, 2009 and will be living in the unit by herself. Since the applicant was a full-time student for parts of five months of the calendar year (January-May), she is ineligible for the tax credit unit, even though she is no longer a student. The applicant could apply again in January 2010, if she certified that she would not be returning to school full-time during that calendar and certification year.

**REMINDER: If at least one member of the Household is not a student or is a part-time student, then the Household is not considered a Full-Time Student Household and is an RHTC eligible Household (if income qualified).**

In addition, IHCDA requires owners to utilize a lease provision in all RHTC units requiring tenants to notify management of any change in student status during the lease term. **If student status changes at any time, the Household’s tax credit eligibility must be reevaluated.**

**Beginning in 2010, IHCDA will require that all tax credit Developments use the student status verification form released by the IRS in the Revised 8823 Guide. This form, entitled “Exhibit 17-1: Student Status Verification,” can be found on page 17-5 of the 8823 Guide. A PDF version of the form is available in Appendix D online at <http://www.in.gov/ihcda/2519.htm>. This form must be included in all tax credit Tenant files.**

**Note: The Full-Time Student Rule does not apply for Developments that have been approved for the Extended Use Policy. For more information on the Extended Use Policy see Part 5.11, specifically Part 5.11 C, Compliance Requirements.**

## **D. Managers/Employees as Tenants**

Resident manager or employee units may be considered in one of the following ways:

1. The manager/employee unit could be considered a common area or other special facility within the Development that supports and/or is reserved for the benefit of all the rental units, provided the employee works full-time for the Development in which he/she lives. Under this interpretation, the unit would be excluded from the low-income occupancy calculation and the unit could be used by the manager without concern as to **the effective rent being charged or** the income level of the manager. **However, if the staff unit is being considered common area, no rent can be charged for the unit. Furthermore, IHCDA will not allow staff units to be considered common area in Developments that have market rate units.**

OR

2. The manager/employee unit could be treated as a tax credit rental unit and the unit could be included in the low-income occupancy percentage calculation for the RHTC building. Under this interpretation, the income level of the manager and the effective rent charged would affect the low-income occupancy percentage calculation for the building **(i.e. the employee must be income qualified and the unit rent restricted).**



Additionally, IHCD will consider requests for additional manager/employee units during the Compliance Period for good cause. To request a manager/employee unit, the Owner must submit the request in writing with documentation supporting the need for the manager/employee unit. Requests should be submitted to IHCD using the "Staff Unit Request Form" in Appendix D available online at <http://www.in.gov/ihcd/2519.htm>. All staff unit requests submitted during the Compliance Period will be charged a \$500 modification fee, regardless of whether or not the request is approved by IHCD.

## F. Live-in Care Attendants

A live-in care attendant (a.k.a. a live-in aide) is a person who resides with one or more elderly, near-elderly, or disabled persons. To qualify as a live-in care attendant, the individual (a) must be determined to be essential to the care and well being of the Tenant, (b) must not be financially obligated to support the Tenant, and (c) must certify that he/she would not be living in the unit except to provide the necessary supportive services. While some family members may qualify, spouses can never be considered a live-in care attendant since they would not meet qualifications (b) & (c).

A live-in care attendant for an RHTC Tenant should not be counted as a Household member for purposes of determining the applicable income limits, and the income of the attendant is not counted as part of the total Household income. The need for a live-in care attendant must be certified with documentation from a medical professional (i.e. a letter from the Tenant's doctor) and included in the Tenant file. If the qualified Tenant vacates the unit, the attendant must vacate as well. If an attendant would like to be certified as a qualified Tenant and remain in the unit, normal certification procedures must be performed and the individual must meet the applicable eligibility requirements of the program.

While the live-in care attendant is not considered a Household member, he/she is still subject to criminal background checks (as per the Tenant selection criteria effective at the property) and must comply with Tenant house rules. An Owner may deny a live-in care attendant that does not pass criminal background checks or evict an attendant who exhibits behavior that is disruptive, illegal, or endangering to other tenants.

## I. Home-Based Business / Office in a Unit

A Tenant may use an RHTC unit to conduct a home-based business, as long as they are income qualified for the unit and the unit is their primary place of residence. The 8823 Guide states on page 4-13:

"A low-income tenant may use a portion of a low-income unit exclusively and on a regular basis as a principle place of business, and claim the associated expenses as tax deductions, as long as the unit is the tenant's primary residence. If the tenant is providing daycare services, the tenant must have applied for (and not have been rejected), be granted (and still have in effect), or be exempt from having a license, certification, registration, or approval as a daycare facility or home under state law."



## J. Foster Children/Adults

Foster children and adults living in a tax credit unit are not considered Household members for purposes of determining income limits. Furthermore, the full amount of income a Household receives for the care of foster children and adults is excluded from the calculation of total Household income.

However, HUD Handbook 4350.3 Change 3 clarified that the earned and unearned income received by foster adults, and the unearned income received by foster children, must be included in the calculation of total Household income, even though those individuals are not considered members of the Household when determining Household size and the applicable income limit.

## K. Special Needs Populations

Per the set-asides and scoring criteria defined in the Qualified Allocation Plan (QAP), a tax credit Development may have committed in writing to set aside a percentage of total units in the Development to qualified tenants who meet the State definition of “special needs population,” as provided in IC 5-20-1-.45 and must equip each unit to meet a particular person’s need at no cost to the tenant. Special needs populations include:

1. Persons with physical or development disabilities
2. Persons with mental impairments
3. Single parent households
4. Victims of domestic violence
5. Abused children
6. Persons with chemical addictions
7. Homeless persons
8. The elderly

### Required Documentation:

1). The Development and a qualified organization that provides and has the capacity to carry out services for the special needs population must enter into an agreement (signed by all parties) acceptable to the Authority in its sole discretion whereby the Owner agrees to: (a) set aside a number of units for the special needs population and (b) notify the qualified organization when vacancies of the set-aside units occur at the Development. The qualified organization must agree to: (a) refer qualified households to the Development and (b) notify Households of the vacancies of the set-aside units at the Development. This is called the Referral Agreement.

The Development may enter into multiple referral agreements throughout the Compliance Period. Furthermore, referral agreements may expire or terminate, as long as at least one active referral agreement with a qualified service provider is in place at all times. IHCD encourages Developments to annually evaluate the affordability and demographic demands of the special needs population in their market area in order to identify potential qualified entities that may provide additional referrals.



2). The resume of the organization providing services for the special needs population (resume must demonstrate ability to provide services).

3). The files of the those Tenants who qualify as a special needs population must include documentation to show that the unit is meeting the special needs set-aside. For those Tenants referred to the Development by the qualified service organization, a copy of the referral should be placed in the file. For special needs Tenants who were not referred to the Development by the qualified organization, the Tenant should self-certify that he/she meets the definition of special needs population. However, management may not inquire into the specific nature of the special need (for example, management cannot ask the Tenant details about their disability).

4). When reporting Tenant events through the Indiana Housing Online Management website, the Owner/management must designate which units meet the special needs population set-aside.

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## Part 3.7 Other Regulations

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### B. General Occupancy Guidelines / Household Size

There are no current RHTC requirements governing minimum or maximum Household size for a particular unit. However, Owners must comply with all applicable local laws, regulations, and/or financing requirements (i.e. if Rural Development, use Rural Development regulations).

IHCDA advises all Owners or agents to be consistent when accepting or rejecting applications. Occupancy guidelines or requirements should be incorporated into the Development's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, Tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit.

Note: When determining Household size, the Owner/management should not include the following members: live-in aides, foster children and adults, and guests (See part 3.6 F for information on live-in aides and Part 3.6 J for information on foster children and adults). All other individuals, including temporarily absent family members, unborn children, and children in joint custody agreements that are in the unit at least 50% of the time, should be included in Household size for purposes of determining the applicable income limit. The Household has the right to decide whether or not to include individuals permanently confined to a hospital or nursing home as a Household member. If the individual is included as a Household member, his/her income must be certified and included.

### C. Reasonable Accommodation / Reasonable Modification

A reasonable accommodation is a change, exception, or adjustment in rules, policies, practices, or services when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an Owner must allow a reasonable accommodation unless doing so will be an



undue financial burden or fundamentally alter the nature of the provider's operations. For more information on reasonable accommodation, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Accommodations Under the Fair Housing Act" released May 17, 2004 (available in Appendix K online at <http://www.in.gov/ihcda/2519.htm>).

A reasonable modification is a change to the physical structure of the premises when such a change is necessary to afford a person with a disability the equal opportunity to use and enjoy a dwelling, including public and common spaces. Per the Fair Housing Act, an Owner must allow a reasonable modification at the expense of the Tenant. However, if the changes needed by the Tenant are ones that should have already been included in the unit or common space in order to comply with design and construction accessibility standards, the Owner will be responsible for paying for the modifications. For more information on reasonable modification, refer to the HUD and Department of Justice (DOJ) Joint Statement "Reasonable Modifications Under the Fair Housing Act" released March 5, 2008 (available in Appendix K online at <http://www.in.gov/ihcda/2519.htm>).

## Section 4 – Qualifying Tenants for RHTC Units

Potential Tenants of low-income, rent-restricted units should be advised early in the application process that there are maximum income limits that apply to these units. Management should explain to potential Tenants that the anticipated income of all adult persons (and the unearned income of minors) expecting to occupy the unit must be verified prior to occupancy and then annually recertified for continued eligibility.

### Part 4.1 Tenant Qualification & Certification Process

7. For Tenants receiving Section 8 assistance, a copy of the Housing Assistance Payment (HAP) Contract and the current HAP Amendment from the Section 8 agency showing the amount of rental assistance.

All documents included in the tenant file must be fully completed, signed, and dated. IHCDA will not accept documents that are incomplete, that have been marked with correction fluids (i.e. whiteout), or where information has been obliterated with pen or marker. To correct a document, management should draw one line through the erroneous information and write the correct information to the side. All corrections should be signed and initialed. Corrections on forms filled out by the management should be initialed by the management agent. Corrections on forms filled out by the Tenant should be initialed by the Tenant. Corrections to the lease should be initialed by both parties.

\*NOTE: Every tenant file must contain a tax credit Tenant Income Certification (TIC) form, regardless of whether or not that unit/tenant also has an income certification from another program in the file (i.e. HUD form 50058/50059 or similar RD certification forms). The Tenant Income Certification form used for the tax credit program includes information that is not found on these other forms, such as the BIN number, the tax credit income and rent limits, Household student status, the tax credit set-aside for the unit, the tax credit effective dates, etc. Therefore, properties that have multiple funding sources will need to have multiple signed tenant income certification forms in their files to demonstrate compliance with each separate program. IHCDA strongly recommends using the sample TIC available online in Appendix D at <http://www.in.gov/ihcda/2519.htm>. If another TIC is



being used, management must make certain that their form captures all of the same information as the IHCD sample TIC.

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## Part 4.2 Tenant Application & Tenant Eligibility Questionnaire

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A fully completed Application and Tenant Eligibility Questionnaire is critical to an accurate determination of Tenant eligibility (See Appendix D for a sample Tenant Eligibility Questionnaire). An Application must be completed by the Household at initial move-in. A Tenant Eligibility Questionnaire must be completed annually by each adult member of the Household (a separate questionnaire for each adult member). The information furnished on the Application and Tenant Eligibility Questionnaire should be used as a tool to determine all sources of income (including total cash value of assets and income from assets) and student status.

E. Collection of demographic data: The Housing and Economic Recovery Act (H.R.3221) passed by Congress on July 31, 2008 requires HUD to collect and report the following information for all LIHTC tenants:

- Race
- Ethnicity
- Family composition
- Age
- Income
- Use of Section 8 (or similar) Rental Assistance Program
- Disability Status; and
- Monthly Rental Payment

This policy requires that RHTC Developments annually report this demographic data for all Household members (each member, not just the head of household). IHCD is being proactive in anticipation of these data collection requirements and is already requesting the necessary information in the online reporting system. Beginning in 2010, the Owner of an RHTC Development must report the demographic data for each household member when reporting tenant events online.

In order to reduce administrative burden, it is IHCD's intent to capture all information for HUD through the online reporting system. However, it is possible that the Owner will be required to complete a separate HUD demographic data collection form for each Development. IHCD will stay current on further updates from HUD regarding demographic data collection and will announce policies as they become finalized. When the final Implementation Plan is released by HUD, IHCD will notify its Multi-Family partners through an MFD Notice.



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## Part 4.3 Tenant Income Verification

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### 4. Public Housing Authority Verification

Once the Owner receives the HUD Form 50058, 50059, or IHCD approved PHA form, no other verifications of income are required. However, verifications for other Section 42 eligibility requirements such as student status, the Tenant Eligibility Questionnaire, **and the tax credit Tenant Income Certification (TIC) form** must still be completed and placed in the Tenant's file. **The 50058/50059/PHA Form replaces the third-party income verifications but does not replace the tax credit TIC. A tax credit TIC must be included in the file, regardless of whether or not there is a 50058/50059 (see Part 4.1 for more information).** The Owner may not rely on the HUD Form 50058, 50059, or PHA form if a reasonable person in the Owner's position would conclude that the Tenant's income is higher than the Tenant's represented annual income. Additionally, the HUD/PHA form must be signed by both the Tenant and the PHA Representative when used as the income **certification verification**.

### 2. Child Support Verification

- If the Tenant is entitled to receive child support, but has not received a payment within the previous year, verification from the agency administering the child support payments in the county the person is moving from must be received by the Owner. In addition, an affidavit from the Tenant to the Owner certifying that a) the Tenant is not receiving child support payments; b) the reason the Tenant is not receiving the payments; and c) the efforts made by the Tenant to receive the payments must be obtained. **If there is a court order but the Tenant has not made efforts to receive the child support, the Owner must count the full amount of court ordered child support as income.**

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## Part 4.4 Annual Income

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Annual Income is defined as the gross amount of anticipated **earned and unearned** income to be received by all adult members of the Household (18 years of age and older, including full-time and part-time students) **and the unearned income of minors** during the twelve (12) months following the date of certification or recertification. For information regarding annual income inclusions and exclusions and how to calculate annual income, see HUD Handbook 4350.3 CHG-3 in Appendix C (**Exhibit 5-1 lists income inclusions and exclusions and Exhibit 5-2 lists asset inclusions and exclusions**). Note that RHTC income limits are based on gross Annual Income, not adjusted Annual Income. Allowances commonly used in some government programs, such as child care allowance, elderly Household allowance, dependent allowance, handicapped assistance allowance, etc., are not permitted to be subtracted from the Household's gross annual income to determine income eligibility for RHTC units.



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## Part 4.6 Annual and Interim Income Recertification Requirements

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### A. Effective Dates of Certifications

**Therefore, the RHTC recertification date for a Household may not change to align with the recertification date for other programs, even if this means that a Household must be certified multiple times annually for multiple programs.** The effective date of recertification is the anniversary date of the move-in. Recertifications must be completed within 120 of the anniversary date.

*Example 1: A Household moves into a tax credit unit on January 1, 2008. On March 1, 2008 the Household begins receiving Section 8 rental assistance and its income is verified and certified for this program. The effective date for the Household's annual tax credit recertification is January 1, 2009, NOT March 1, 2009.*

**Example 2: A Household moves into a tax credit unit on July 15, 2009. The first annual recertification is due with an effective date of July 15, 2010. The effective date of the recertification TIC does not move up to the first of the month (July 1, 2010) or get pushed back to the first of the next month (August 1, 2010) as may be the case with other low-income housing programs.**

**NOTE: While the effective date of the annual Tenant Income Certification will never change, the effective date of the lease may change. For example, when a Tenant receives a Section 8 voucher, a new lease will be executed to coincide with the voucher. As long as the initial lease was signed for a six (6) month term (regardless of whether the term is completed prior to the new lease being executed) there is no tax credit violation. Therefore, the effective date of the lease and the effective date of the Tenant Income Certification may not always be concurrent. The effective date regulations discussed in this section are only referring to the effective dates of the tax credit Tenant Income Certification, not the lease.**

### **B. Changes in Household Composition**

#### **1: Adding a New Household Member to an Existing Qualified Household**

Whenever Household composition changes, RHTC eligibility must be reevaluated. Composition changes include a birth, a death, a new Tenant moving into the Household, or an existing Tenant vacating the Household. In the event that a new member is added to a qualified Household, the following steps must be taken:

1. The new Household member should complete an Application and Tenant Eligibility Questionnaire. A new Tenant Income Certification form (TIC) and verification of income and assets must be completed for the new member;



2. The new Household member's income must be included as part of the Household's certified income. *For 100% RHTC projects, the new Tenant's income is added to the original Household income at move-in. For mixed-use projects (projects with both RHTC and market rate units), the new Tenant's income is added to the Household income as of the most recent annual recertification.* The combined Household income must be compared to the maximum allowable income limit in effect at the time and based on actual Household size; and
3. If the combined Household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or Development will be in violation of Section 42 requirements by adding the new Tenant.

Example:    1 person Household income limit = \$15,000  
              2 person Household income limit = \$17,000  
              140% of 2 person income limit    = \$23,800

**Example 1: Mixed-use Project**

*Tenant A is a qualified Tenant living alone in a one-bedroom unit. Her income at initial certification (March 14, 2008) was \$9,000. The tenant recertifies on March 14, 2009 with an income of \$10,500. Eight months later, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit on December 1, 2009. Tenant B completes an Application and Questionnaire, his income and assets are verified through third-party sources, and a TIC is completed. Tenant B is certified as having an annual income of \$12,900. The Household's combined income will be \$23,400 (the sum of Tenant A's income at the last recertification and the newly certified income for the new household member Tenant B). The Household still qualifies, since it is below the 140% limit of \$23,800. If the combined income of Tenants A and B would exceed 140% of the current income limit, the Next Available Unit Rule would go into effect. The TIC for the new tenant is dated December 1, 2009, but the annual Household recertification is still due March 14, 2010 (the anniversary of Tenant A's initial move-in).*

**Example 2: 100% Tax Credit Project**

*Tenant A is a qualified Tenant living alone in a one-bedroom unit. Her income at initial certification (March 14, 2008) was \$9,000. The tenant recertifies on March 14, 2009, but since this is a 100% Tax Credit Project management does not verify her income at this time. Eight months later, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit on December 1, 2009. Tenant B completes an Application and Questionnaire, his income and assets are verified through third-party sources, and a TIC is completed. Tenant B is certified as having an annual income of \$12,900. The Household's combined income will be \$21,900 (the sum of Tenant A's income at move-in and the newly certified income for the new household member Tenant B). The Household still qualifies, since it is below the 140% limit of \$23,800. If the combined income of Tenants A and B would exceed 140% of the current income limit, the Next Available Unit Rule would go into effect. The TIC for the new tenant is dated December 1, 2009, but the annual Household recertification is still due March 14, 2010 (the anniversary of Tenant A's initial move-in).*



**NOTE:** Only the income and eligibility of the new resident is required to be verified when adding a member to a Household before the Annual Tenant Income Certification is due (*i.e. the existing members do not need to be recertified if it is not time for their annual recertification*). Owners must verify the new resident's income and add it to the existing Household's certified income to determine if the Household's income has exceeded the 140% income limit. The new resident should sign an independent Tenant Income Certification form and complete all verification documents. *The Household's annual recertification will remain on the anniversary of the original move-in date, not the date that the new member was added.*

*2: Qualifying Units When All Original Household Members Vacate the Unit*  
*The Revised 8823 Guide includes a section on "Changes in Family Size" (pages 4-4 through 4-7 of the Guide). The following excerpt (from page 4-5) is of particular importance:*

*"A household may continue to add members as long as at least one member of the original low-income household continues to live in the unit. Once all the original tenants have moved out of the unit, the remaining tenants must be certified as new income-qualified households unless:*

*1. For mixed-use projects, the newly created household was income qualified, or the remaining tenants were independently income qualified at the time they moved into the unit.*

*2. For 100% LIHC buildings, the remaining tenants were independently income qualified at the time they moved into the unit."*

*So, even if all of the original Household members vacate a unit, Tenants who moved in at a later date may be eligible to remain in the unit without being treated as a new move-in if they meet one of the two exceptions above.*

*Example 1: Mixed-use Project*

*Jerry moves into a two bedroom RHTC unit (in a mixed-use project) on May 1, 2007 and is recertified on May 1, 2008. His friend Thomas decides to move into the unit on October 1, 2008. Thomas completes all of the necessary paperwork and his income is added to Jerry's income as of the most recent certification (the May 2008 recertification). The combined Household income from both members is still below the applicable income limit. On January 1, 2009, Jerry (the original member) moves out to live with his new fiancée. Thomas does not have to be certified as a new Tenant, because the newly created Household was below the income limits when he moved in on October 1, 2008.*

*Example 2: 100% Tax Credit Project*

*Jerry moves into a two bedroom RHTC unit (in a 100% tax credit project) on May 1, 2007 and is recertified on May 1, 2008. His friend Thomas decides to move into the unit on October 1, 2008. Thomas completes all of the necessary paperwork and his income is added to Jerry's income at move-in (the May 2007 certification). On January 1, 2009 Jerry (the original member) moves out to live with his new fiancée. Management must determine if Thomas independently qualified as a one person household at the time he moved into the unit. If so, he may remain as a qualified tax credit Household.*



*If not, Thomas must be immediately certified and treated as a new Household. If his current conditions allow him to qualify as a new move-in, he may stay. If not, he will have to vacate the unit.*

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## **Part 4.7 100% Recertification Exemption**

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\*NOTE: The 2009 Manual referred to the “100% Recertification Waiver.” This language has been changed to “100% Recertification **Exemption**” throughout the 2010 Manual and all related forms. Additionally, the following language was added to Part 4.7 of the Manual:

*IHCDA may allow the recertification exemption for buildings financed by the Rural Housing Service (RHS) under the Section 515 program and buildings financed with tax-exempt bonds (50% or more of the aggregate basis of the building and land). To qualify for the exemption, IHCDA must enter into an agreement with RHS or the tax-exempt bond issuer. In this agreement, RHS or the bond issuer must agree to provide information concerning the income and rent of the tenants in the building to IHCDA. IHCDA may assume the accuracy of the information provided without further verification.*

*Note: When monitoring files at projects that are using the 100% Recertification Exemption, IHCDA will look at the current certification to ensure that the rent limits are not exceeded and to check that there is still a TIC and verification of student status on file. The IHCDA monitor will then go back and look at the initial move-in file for the Tenant to verify income eligibility. Thus, the 100% Recertification Exemption puts extra importance on correctly performing move-in certifications.*

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## **Part 5.1 Owner and Management Agent Contacts**

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IHCDA will allow no more than one Owner contact name and address and one Management contact name and address per Development. If at any time the contact person of the Owner or Management Agent changes, it is the sole responsibility of the Owner to inform IHCDA in writing of such change with supporting documentation. *Changes in Ownership must be reported to IHCDA via the “Property Ownership Change Form” in Appendix D available online at <http://www.in.gov/ihcda/2519.htm>.* Changes in Management must be reported to IHCDA via the “Property Management Change Form” in Appendix D available online at <http://www.in.gov/ihcda/2519.htm>.

*Failure to notify IHCDA of changes in ownership after the issuance of IRS Form 8609 could result in the allocation being rescinded and/or possible noncompliance issues.*

*Note: The IHCDA Board of Directors must approve any change in ownership or transfer request if made prior to the issuance of IRS Form 8609 for any Development that has received an allocation of Rental Housing Financing and/or Bonds.*



### Part 5.3 Compliance Training Workshops

Owners and property management staff assigned to the Development must receive, prior to issuance of IRS Form 8609, an IHCD A Rental Housing Tax Credit Compliance Training completion certificate within the last year. *An On-Demand Owner Training is available from IHCD A on a flash drive. The drive contains a training presentation (in PowerPoint with audio voice annotation), a post-quiz that must be taken by the Owner, and a folder containing numerous tax credit reference materials. Cost of the training is \$150.*

IHCD A's 2010 Compliance Trainings are targeted towards onsite property management personnel. The trainings will be in the format of interactive workshops, involving work with tenant files, as well as case studies and games. IHCD A has contracted with Compliance Solutions to offer nine trainings throughout the year: three in the spring, three in the summer, and three in the fall. *Three of the trainings will be the same session as was offered in 2009 ("Qualifying Households I"), and the remaining six sessions will be an advanced training ("Qualifying Households II") for those who already completed the first course in 2009.* All trainings will take place in the community rooms of existing tax credit Developments throughout the state. The cost will be \$75 per participant, which includes registration fees, a workshop manual, a 2010 IHCD A Compliance Manual, and a CD with various tax credit resources. The dates and locations are listed below:

<u>TRAINING TYPE</u>	<u>DATE</u>	<u>CITY</u>	<u>LOCATION</u>
<u>QH I</u>	<u>March 30, 2010</u>	<u>Hammond</u>	<u>Golden Manor</u>
<u>QH II</u>	<u>March 31, 2010</u>	<u>Avon</u>	<u>Preserve of Avon</u>
<u>QH II</u>	<u>April 1, 2010</u>	<u>Washington</u>	<u>Cherry Tree</u>
<u>QH II</u>	<u>July 13, 2010</u>	<u>Elkhart</u>	<u>Water Tower Place</u>
<u>QH I</u>	<u>July 14, 2010</u>	<u>Indianapolis</u>	<u>Brookhaven</u>
<u>QH II</u>	<u>July 15, 2010</u>	<u>West Lafayette</u>	<u>Chapelgate Park</u>
<u>QH II</u>	<u>October 12, 2010</u>	<u>Hartford City</u>	<u>Hartford Place Senior</u>
<u>QH II</u>	<u>October 13, 2010</u>	<u>Indianapolis</u>	<u>Bradford Lake</u>
<u>QH I</u>	<u>October 14, 2010</u>	<u>New Albany</u>	<u>Brookview Glen</u>

*Additionally, IHCD A and Compliance Solutions will offer the following special trainings in 2010.*

<u>TRAINING TYPE</u>	<u>DATE</u>	<u>CITY</u>	<u>LOCATION</u>
<u>HOME Rental Compliance Workshop</u>	<u>June 9, 2010</u>	<u>Indianapolis</u>	<u>TBD</u>
<u>Physical Inspection Compliance Workshop</u>	<u>June 10, 2010</u>	<u>Indianapolis</u>	<u>TBD</u>
<u>Complying with Tax Credits and Multiple Funding Sources</u>	<u>2 days, TBD</u>	<u>Indianapolis</u>	<u>TBD</u>

For registration and other additional information, please see IHCD A's compliance webpage at <http://www.in.gov/ihcda/2519.htm>. *Demand for the 2009 trainings was high and most trainings sold out. Please register early for a guaranteed spot at the 2010 trainings.*



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## Part 5.5 Annual Owner Certification of Continuing Compliance

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3. The Owner has received a Tenant Income Certification form for each low-income Tenant in the Development and sufficient documentation to support that certification;

Or

*In the case of a Tenant receiving Section 8 housing assistance payments, the 50058 or 50059 from the applicable public housing authority to the Development Owner showing that the Tenant's income does not exceed the applicable Income Limits under the Code have been received.*

Beginning January 1, 2009, all IHCD assisted multi-family rental developments are required to enter tenant events using the Indiana Housing Online Management rental reporting system. Tenant events include move-ins, move-outs, recertifications, unit transfers, rent *and income and Utility Allowance changes, household composition updates, and student status updates.* In order to obtain the maximum benefits from the Indiana Housing Online Management system it is **required that all tenant events be entered into the system within thirty (30) days of the event date.**

To use the rental reporting system or register to become a user, please visit the Indiana Housing Online Management website at <https://ihcdaonline.com/>. Free on-demand training videos that explain how to use the rental reporting system are available online at <https://ihcdaonline.com/Links.htm>. *Additionally, in March 2009, IHCD released detailed guidance on registering for the Online Management website in Multi-Family Department Notice MFD-09-06. This notice (and all other past MFD Notices) is archived online at <http://www.in.gov/ihcda/2520.htm>.*

A copy of the Annual Certification of Compliance that must be used by all Owners is located in Appendices F (RHTC only) and G (Combined Properties Sources) available online at <http://www.in.gov/ihcda/2519.htm>. *IHCDA will not accept any Owner Certification that is not in the same format as provided in Appendix F /G or any Owner Certification that is handwritten.*

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## Part 5.6 IHCD Tenant/Unit File Review and Onsite Development Inspections

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*Example of regular monitoring/physical inspection schedule:*  
*A Development consists of three buildings. The last building was placed-in-service in 2009. IHCD's first monitoring and physical inspection will occur in 2011 (two years after the year of the placed-in-service date of the last building). After this initial monitoring/inspection, a regularly scheduled monitoring will occur once every three years (2014, 2017, etc). However, IHCD has the right to perform additional monitorings/inspections at any time, with or without notice to the Owner/management.*

*IHCDA will release a tentative monitoring list at the beginning of the year. This list will include all of the Developments that IHCD intends to monitor and inspect for the calendar year (including onsite file reviews, desktop file reviews, and physical inspections). The list will not tell the date of the monitoring/inspection or the files/units that will be reviewed. This list will be released as a courtesy to*



Development Owners. However, IHCDA reserves the right to add or remove Developments from the list throughout the year as necessary. The 2010 list is available online at <http://www.in.gov/ihcda/2519.htm>.

A. When performing an onsite (at the Development or management office) review, IHCDA will:

2. IRS guidance in the 8823 Guide (page 3-2), states: "A random selection of tenant files or LIHC units is required. The method of choosing the sample of files or units to be inspected must not give the owner advance notice of which units and tenants records are to be inspected and reviewed." Therefore, IHCDA will no longer provide advance notice of which Tenant files will be reviewed during an onsite audit. Management must have all Tenant files accessible (including initial files) when the IHCDA Monitor arrives onsite. The Monitor will randomly choose a selection of 20% of the files for review.

B. When performing an in-house/desktop (at IHCDA offices) review, IHCDA will:

2. Respectfully request that copies of the selected files and documentation either be shipped to IHCDA or hand delivered by the Owner or a Representative of the Owner. **NOTE:** ~~For in-house audits, IHCDA prefers to receive electronic files rather than paper "hard copies."~~ Electronic documents should be submitted in PDF format on a CD-ROM, not via email attachments. Each requested tenant file should be submitted as a separate PDF file and labeled as the Unit #. IHCDA can no longer accept Tenant files in PDF format due to compatibility issues. IHCDA is investigating other avenues of submitting files electronically, but until further notice all files must be submitted as paper hardcopies.

C. Prior to performing an onsite Development Inspection, IHCDA will:

- ~~1. Notify the Owner and/or management company, at the beginning of the calendar year, of the date and approximate time of the inspection.~~

D. After performing an onsite Development Inspection, IHCDA will:

1. Provide to the property representative, if needed, a copy of a Critical Violations Letter identifying all exigent health, safety, and/or fire hazards observed at the time of the inspection that require immediate corrections. **All exigent health and safety issues identified in the Critical Violations Letter must be corrected within twenty-four (24) hours and IHCDA must be notified of the completed corrections within seventy-two (72) hours.** Critical violations that are not corrected within twenty-four (24) hours will be fined \$250 per day, starting the first hour after the twenty-four (24) hour correction period expires.



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## Part 5.10 Amendments to Compliance Monitoring Procedures

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The 2010 Compliance Manual includes major amendments/additions in the following areas. Please make certain to carefully read these sections of the Manual and to contact the IHCD compliance staff with any questions.

*Using the Property Ownership Change Form- See Section 2, Part 2.2 I*

*Violations of the Rent Limit- See Section 3, Part 3.3 E*

*Mandatory Student Status Verification Form - See Section 3, Part 3.6 B*

*Modification Fee charged for Staff Unit Requests- See Section 3, Part 3.6 D*

*Clarification on Home Based Offices- See Section 3, Part 3.6 I*

*Clarification on Foster Children and Adults- See Section 3, Part 3.6 J*

*Clarification on Special Needs Populations- See Section 3, Part 3.6 K*

*Using the TIC Form in all files- See Section 4, Part 4.1*

*Owner must collect demographic data for all household members- See Section 4, Part 4.2 F*

*HUD Form 50058/50059 does not replace the TIC- See Section 4, Part 4.3 B-4*

*No advance notice of which files will be monitored- See Section 5, Part 5.6 A*

*IHCDA will no longer accept tenant files in PDF format- See Section 5, Part 5.6 B*

*Casualty Loss must be reported to IHCDA on Form K- See Section 5, Part 5.12*

*IHCDA Physical Inspection Guide released- Available online in Appendix I*

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## Part 5.11 Extended Use Policy

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### B. Reporting Requirements

The reporting requirements for Developments approved for the Extended Use Policy are as follows:

- 1) The Owner will submit the Extended Use Annual Owner Certification for every year of the Extended Use Period annually by January 31.
- 2) The Monitoring Fee will be \$10 per unit, *with a minimum fee of \$110 and a maximum fee of \$2730.* However, IHCDA will not charge a fee for units that have Rural Development or *Tenant Project* Based Section 8 funding. (See Part 5.11 D6).

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## Part 5.12 Casualty Loss

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Casualty loss information must be reported *via "Casualty Loss Form K" (see Appendix I available online at <http://www.in.gov/ihcda/2519.htm>).* The form should be mailed to:



## Section 7 - Glossary

\*The following terms were added to the glossary:

*100% Tax Credit Project*

*Earned Income*

*Educational Organization*

*Empty Unit*

*Foster Adult*

*Foster Children*

*Guest*

*Live-in Care Attendant/Live-in Aide*

*Mixed Use Project*

*Over-income Unit*

*Referral Agreement*

*Special Needs Populations*

*Transient Use*

*Unearned Income*

*Vacant Unit*

